The University of Chicago

LEGAL BASIS OF CITY AND SCHOOL RELATIONSHIPS

A PART OF A DISSERTATION SUBMITTED
TO THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATION
1936

By
EDWARD CLAUDE BOLMEIER

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CHAPTER IX

SUMMARY AND CONCLUSIONS

State Control of Education

Education is fundamentally the concern of the state. The power of the state legislature with respect to matters of educational policy is limited only by constitutional provisions. Since constitutions of the different states vary considerably in defining the limits in which legislatures may enact laws, it is only to be expected that the legislative bodies of the several states have followed various courses in formulating policies of educational administration.

Variability is conspicuously evident with respect to the different agencies selected by the state for the administration of its educational system. In some instances a large measure of administrative control is retained by the state and exercised by a state board or by state officers. In other instances the state authorizes or requires officers of subdivisions of the state, such as counties, towns, cities, or school districts, to perform certain duties in regard to the establishment and maintenance of of public schools.

Where this grant of authority has been delegated to city officials, it has often been assumed that education is an affair to be controlled by city authorities in the same manner as city affairs are controlled. Careful scrutiny of statutory laws and court decisions, however, leads irresistibly to the conclusion that education is the function of the state. City officials have no more legal control over education than what is clearly stipulated in the laws. They possess no inherent control over education, nor do they have permanent title to an original grant. The legislature having tried one plan is not precluded from trying another. It has complete choice of methods and may change its plans at will--even to the extent of placing the schools completely under the control of city officials, or, on the other extreme, of establishing an entirely independent school board with full power and authority within the law to manage and maintain the public school system.

Separate Identity of Civil City and School City

The civil city, commonly referred to as a "municipal

corporation," is a local corporation created at its own initiation for the purpose of performing local functions. The school city or school district, on the other hand, is a "quasi-corporation," created by the legislature for the purpose of performing a state function.

This distinction is significant, especially, in view of the fact that 120 of the 191 cities included in this study have boundaries which coincide with those of corresponding school districts, and apparently in some cases it has often been erroneously assumed that the school city and civil city are a single corporation. The courts, however, have generally held that even though they are coterminous, they are distinct and disparate corporations with entirely different functions to perform.

The separate legal identity of the school district and the municipality has frequently been defined by the courts as a result of litigation caused by cities furnishing water free of charge to the city school districts. In certain other cases the courts have also defined separate identity by declaring that, unless provided by law, the debts of a school city cannot be aggregated with those of the civil city in setting the maximum limit of municipal indebtedness.

The fact that certain officers of cities may be delegated some duties of authority in relation to the control and management of the city schools does not change the status or destroy the separate identity of the school district.

School System as a Department of the City

Unless the laws of the state clearly specify that the city school system is a department of the city, the courts will not construe it to be such. Where the language of the law is indefinite and vague, the courts uphold the concept of state sovereignty with respect to education and declare the school system as being independent of the city and its various departments. If, on the other hand, the law provides that the school system shall function as a department of the city, the courts will not invalidate such provisions unless they find them to be unconstitutional.

The best examples of a city school system functioning as a department of the city are found in St. Paul, Minnesota, and Chattanooga, Tennessee, where there are no regular boards of education. A Commissioner of Education, chosen from the governing body of each of these cities, performs all the duties which are commonly performed by boards of education in other cities.

The interpretations of the courts concerning school-board members as officers of the city are similar to those relating to the city school system as a department of the city. Unless

statutory laws refer to school-board members as city officers, the courts will not recognize them as such. In fact, the courts go so far as to say that city officials are state officers while performing functions in behalf of the public school system.

Types of Legislation

General laws.--State constitutions, in general, charge the legislature with the responsibility of providing for a "uniform system of education." Under the plenary powers granted the state legislatures, however, so many laws have been passed which are applicable to a single city or class of cities that numerous differences exist, even within a single state, as to what course must be pursued in establishing a "uniform system of education."

Over one-third of the cities with populations exceeding 50,000 are governed by general state laws. It might be assumed that such cities are governed by laws equally applicable to other cities within the same state. Classification of cities according to population, however, sometimes results in special legislation under the guise of general legislation as exemplified by certain school cities in Indiana where the population limits for classification are so narrow as to differentiate between cities of nearly equal size.

Classification systems have been devised for city school districts as well as for civil cities. The provisions of law applicable to a city school system may be determined by its classification as a civil city, school city, or both.

The courts generally hold that classification of cities according to population, for the purpose of legislation, is valid if the object of the legislation bears a fair relation to the difference in population. In view of the rigid classification systems of some states, the courts have apparently been liberal in determining what is "fair."

Special laws.--Over 30 per cent of the cities included in this investigation are governed, in part, by special-acts charters created by state legislature. Such cities are found especially in the Southern and New England states.

The fact that a city is governed by some special acts does not exempt it entirely from conforming to general laws of the state, such as those pertaining to educational matters. On the other nand, a special-acts charter may include special provisions concerning the city school system. For example, these charters frequently specify the manner of school-board selection and the type of school-budgetary control.

If special school legislation is constitutional the courts

will not invalidate it, even when it is in conflict with the general laws of the state.

Home-rule Government

Over half of the cities with populations exceeding 200,000 are governed by home rule. The percentage is considerably less for the smaller cities.

Home-rule charters have added to the complexity of laws affecting school and city relationships. Frequently constitutional or statutory provisions define the limits in which local legislation may be passed with respect to education. Laws of the state of New York definitely state that education is beyond the scope of local authority, thereby prohibiting educational provisions from being incorporated into the home-rule charters. On the other hand, there are those provisions, as exemplified by California and Oklahoma constitutions, where certain powers, such as the selection of members of school boards, are granted the local governments in dealing with educational administration. In between those two extremes are those provisions which are indefinite by referring to such vague terms as "local affairs" and "municipal affairs." Consequently many provisions are written into the home-rule charters which are challenged on the ground of unconstitutionality.

The courts generally hold that unless the state constitution or statutes specifically grant municipalities the right to enact laws relating to education, no such prerogative may be assumed. Adjudications of this nature are based upon the legal principle that home-rule government is applicable only to local affairs and that education is not a local but a state affair.

Not infrequently certain portions of home-rule charters dealing with education are found to be in conflict with statutory laws of the state. Where such conflicts result in litigation, the courts invariably hold that those provisions of home-rule charters having to do with school matters must be in harmony with, and not contrary to, the constitution of the state and statutory provisions relative thereto.

Boards of Education

Legal provisions for the selection of school-board members may be found in general laws, special acts, and home-rule charters. These provisions indicate a lack of uniformity in regard to size of board, selecting agencies, methods of filling vacancies, removal of members, type of elections, political representation, and ex officio membership.

Size of school board.--The size of school boards ranges

from three to twenty-two members. Odd-numbered boards with five, seven, or nine members are most prevalent. Fifty-three cities have seven members on their boards; only three cities have boards of eight members. The main merit of an odd-numbered board is to avoid deadlocks in voting.

Appointing agencies.--In over one-fourth of the cities of this study, the law authorizes city officials to appoint members of the boards of education. The appointive method is more prevalent in cities above a half-million population than in smaller cities.

The mayor is most frequently specified as the appointing agency. In twenty-six of the forty-eight cities where boards are appointed, the mayor has the complete power of appointment; in three cities, the mayor's appointment requires the sanction of the council; and in one city, San Francisco, the mayor's appointment requires confirmation of the electorate.

School-board members in eleven cities are selected by the city council or commission. In one other city, the city council and county commissioners select members.

Less frequently the laws provide that appointment shall be made by judges, the state legislature, or the city manager.

Filling vacancies.--In practically all cases where board members gain office by appointment, the laws provide that the same agency which appoints is also authorized to fill vacancies which occur by reasons other than expiration of term. In certain cities where school-board members are elected, some city official may be empowered to fill a vacancy for the residue of the term or until the next election.

Where the laws provide that the original appointment by the mayor requires the confirmation of another agency, the confirmation is similarly applicable to appointments for filling vacancies.

The school board of Macon, Georgia, has perpetual succession of members; a vacancy by any cause is filled by the board itself.

Removal.--The power to remove school-board members from office is not so frequently granted to city officials as is the power to make appointments or to fill vacancies. Moreover, removal is usually provided for in the general laws with similar application to all school districts of a given state whether incorporated by special act or not.

Among agencies most commonly authorized by law to remove school-board members are the boards themselves, the voters--by the recall, courts, county officials, and city officials. In practically all cases the law provides that the member, of whom

removal is sought, has the legal right to defend himself at a hearing.

Elections.--Board members are appointed in forty-nine cities and elected in 139 cities. In over 60 per cent of the cities where members are elected, they are voted upon at the same time and place as are candidates for municipal offices. Moreover, such elections are usually under the supervision of city officials.

Types of ballots.--The laws applicable to a majority of cities provide that the names of candidates to be voted upon as school-board members must be placed upon non-partisan ballots. In thirty-one cities, however, the names of school-board nominees are designated on the ballot by party affiliation. Twelve of these cities are in the Commonwealth of Pennsylvania.

Ward representation.--The more recent laws indicate that the selection of board members by political wards of the city is disappearing in favor of representation by the city school district at large. In at least eight cities, however, selection is still made solely on a ward basis. In a few other instances members are selected from separate districts which are somewhat analogous to the wards or councilmanic districts of the city.

Ex officio members.--Special acts of twenty-four cities provide that the mayor, a council member, alderman, or city manager shall act as an ex officio member of the city board of education; most frequently the person so designated is the mayor. Ten of these acts specify that the mayor, as an ex officio member, shall be chairman of the board. Several of the acts provide for two--and in one case three--ex officio members to serve on the school board.

In several cities the mayor has some connection with the board, even though not an ex officio member thereof. In Holyoke and Worcester, Massachusetts, he may attend meetings of the board with the right to participate in the discussion. The mayor of Bridgeport, Connecticut, is authorized to vote in case of a tie, and to participate as a regular member in the event his presence is needed to create a quorum of the board.

Ex Officio School Officers

School treasurer.--A majority of the laws provide that the treasurer for the board of education shall be elected by the voters or appointed by members of the school board. In over 43 per cent of the cities, however, some city official acts as custodian of school funds. The percentage is greatest in the group of cities having over a half-million inhabitants.

Generally, the law provides that the city treasurer shall be ex officio treasurer of the city school board.

Courts have held that a city treasurer is a school officer while performing functions in behalf of the public schools.

Auditor of school financial transactions.--Where the laws provide that the city treasurer shall act as treasurer for the school board, provisions may often be found which also specify that the city auditor, comptroller, or controller shall act as auditor for the city schools. In approximately one-third of the cities some city official acts as auditor for the city school system.

Compensation of city treasurer and auditor for performing duties in behalf of the city schools is usually paid out of school funds at the direction of school officials.

School-board attorney.--The board of education is frequently authorized to designate the counsel which shall advise the board in legal matters. For a number of cities, however, the laws stipulate that legal advice may be requested from state attorneys, county attorneys, and city attorneys. In over half of the cities above 200,000 population, the board of education is dependent entirely or in part upon the city attorney or city law department for legal advice. Some laws permit counsel in addition to that available from the city attorney; other laws require that where the city attorney is designated as ex officio attorney for the board of education no other counsel may be employed.

Purchasing agent.--The purchasing agent or some similar city official, in at least twenty cities, purchases all or certain of the school supplies. In some instances the city purchasing agent is authorized to purchase supplies for the schools only when the cost of the purchase shall be above or below a specified amount.

When a city agent is authorized to purchase supplies for the city schools he is usually required to make the purchases in conformity with specifications supplied by the board of education.

City School Finance

School-budget estimate.--The most important educational function performed by city officials concerns the school-budget estimate. More than one-third of the cities with populations over 50,000 are governed by laws which permit city officers or boards some control over the school budget. In a number of other cities, the budget must be submitted to city officials but without authority to revise.

The degree of control which may be exercised in revising the school-budget estimate varies considerably even among cities of a single state. On the one extreme, city officials may revise any or all items of the budget; on the other, the authority may

be no greater than to merely suggest changes or to keep proposed appropriations within legal limitations.

Since city officials constitute the governing bodies of schools in St. Paul and Chattanooga, complete control over the school budget is vested in them. The control is almost as great in some cities where there are city school boards. Thus, in Baltimore, the school budget is subject to review by the board of estimates and the city council; both agencies may reduce specific items of the estimate.

Where the laws stipulate that city officials may review the school budget, without specific mention as to the manner of revision, the courts generally hold that the revision shall be made only with respect to the total or in directing how funds are classified. Adjudications of the states of Massachusetts and New York illustrate the restrictions placed upon city officials in altering specific items in the budget--particularly those affecting teachers' salaries.

The mayor's veto of the budget as a whole or in part is not always final. In at least seven cities, the mayor's veto over the school budget may be overriden by a required vote of the members of the board of education.

Frequently city boards of education are required to inform the public about the budget by means of a public hearing or publication in a local newspaper so that city officials and other citizens may have the opportunity of knowing the contemplated action of the board.

The laws of fifteen states require city school boards to have the budget estimate published in a local newspaper; twelve states require a public hearing on the budget; and in ten states publication and public hearings are both required.

City school taxes.--Some cities are not required by law to levy a separate school tax; a general city tax contributes toward the maintenance of the schools as well as municipal functions. In such cases, the amount of funds made available for school purposes depends upon the decision of city authorities or upon tax limitations specified in the laws.

The amount of discretion city authorities may exercise over the tax levy or tax rate varies considerably, even among cities within a single state. Whether city officials are required to appropriate the amount certified by the school board, or to exercise their own judgment as to the amount which shall be appropriated, are matters determined by the laws under which the various cities operate and by judicial interpretation of those laws which have been contested in the courts.

Where city boards of education are authorized to levy and

collect school taxes, city officials are frequently required by law to submit certain information, such as assessment rolls, which would facilitate levying and collecting the school taxes.

Issuance of school bonds.--Considerable variation exists in laws providing for the issuance of school bonds. The most prevalent law authorizing a school-bond issue provides that the board of education may make the issue after the proposition has been submitted to and approved by the voters.

A number of laws authorize certain city officials or bodies to participate some way in the issuance of school bonds. In some instances, the proposition may be submitted by the school board but requires the approval of city officials before becoming effective; in others, the city council initiates and the electorate approves the proposal. In certain New Jersey cities, the board of education makes its request to the governing body or finance body of the city, whereupon such body decides whether or not bonds shall be issued.

Unless the law specifically refers to a debt limitation as being applicable to both the school and civil city, the courts generally consider bonded indebtedness of the city school system as not being subject to a law limiting city indebtedness.

School Property

Title to school property.--The weight of judicial opinion indicates that, since education is a state affair, school property is state property. In the majority of cases, therefore, the laws specify that title to school property shall be vested in the school district or board of education. Nevertheless, in fifty-one cities, school property is held in the name of the city. The courts have held that this is nominally so, but the city holds such property only as a "dry trustee."

Selection of school sites.--In general, boards of education are authorized to select school sites with or without approval of some other body. Where approval is required, the electorate is most frequently specified as the approving body. In fewer instances, the selection of school sites by the board of education requires the approval of city officials; cities of the second class in Wisconsin are illustrative. Conversely, in some cities, the city officials select the school site and the approval of the school board is necessary. Only in a few cities do city officials have complete control in the selection of school sites.

Plans and construction of school buildings.--The common practice, as determined by general school laws, is for the board of education to assume full responsibility for the plans and specifications of new buildings. Special acts and some general

laws specify that boards of education and city officials are jointly responsible. There are approximately twenty cities thus affected. In at least thirty cities some city official, board, or commission is authorized to supervise the construction of school buildings.

Service to school property by utilities.--Some kind of concession is made by municipal utilities to the public schools in fifty-five of the cities included in this study. The most important of these concessions is the furnishing of water without charge or at a reduced rate. In twenty-nine cities, water is supplied without charge to the public schools. Reduced rates prevail in seven other cities.

Other concessions made by municipal utilities to city schools are on power, light, gas, telephones, office space, and transportation.

Where the matter of extending free service by municipal utilities to public schools has been a subject of litigation, the courts have generally held that a municipality cannot expend funds for education.

City Civil Service and Retirement

Most cities select employees through a system of city civil service, supervised by a civil service commission. In more than one-fourth of the cities, certain employees of the city school system are affected by city civil service. The law providing for city civil service is, in most cases, applicable only to non-educational employees, such as, janitors, engineers, and clerks.

Often the same laws which provide city civil service also provide for retirement and pension of school employees. In contrast with those affected by city civil service, city retirement laws are frequently applicable to teachers and others of the educational force. Moreover, the retirement boards usually include members of the teaching staff, whereas city civil service commissions include only appointees of city officials.

Health and Recreation Program

Many laws referring to health and recreation programs are lacking in clarity and conciseness. Sometimes there is an absence of law entirely so that the programs adopted in certain cities are without legal sanction or compulsion. Often the public schools are required to perform functions similarly required of the city health department and recreation department, thereby resulting in needless duplication.

The relationships between the schools and city departments of health and recreation are therefore frequently of an extra-legal character. School officials state, however, that a high degree of cooperation exists between schools and city departments in carrying out health and recreation programs, thereby reducing cost and duplication of activities.

Coordination of the health and recreation programs of city departments and the public schools is frequently acquired by representatives of the schools serving on the city board of health and the city recreation department.

General Conclusions

The purpose of this study has been to describe, in the light of judicial interpretations, the present laws which determine the relative control exercised by city and school officials over the city school system.

It has been shown that there is a lack of uniformity with regard to school and city relationships, not only among the several states but among cities of an individual state. This investigation, however, has given no evidence which indicates that uniformity would be either feasible or desirable.

It is conceivable that a uniform plan would even be harmful. Laws under which one city operates successfully might be entirely unsatisfactory for a different city. Local conditions and traditions are factors which cannot be disregarded.

Disputes between city and school officials do not develop so frequently from a situation based upon the desirability of a relationship as upon the legality. It may be concluded, therefore, that a better understanding would exist between city and school officials if legislation were more carefully enacted. Whenever the legislature authorizes city officials to perform certain functions in behalf of the public schools, the authority should be so clearly and unmistakably defined that both city and school officials will know where their respective duties begin and end.